



(4310-4J-P)

## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Indian Affairs**

#### **Habematolel Pomo of Upper Lake – Tribal Liquor Ordinance No. 2008-01**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

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**SUMMARY:** This notice publishes the Tribal Liquor Ordinance No. 2008-01 of the

Habematolel Pomo of Upper Lake. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Indian Country of the Habematolel Pomo of Upper Lake.

The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Habematolel Pomo of Upper Lake. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their jurisdiction, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

**DATES:** *Effective Date:* This Amendment is effective [date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Sophia Torres, Tribal Government Specialist, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825, Phone: (916)978-6073; Fax: (916)916-6099; or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, DC 20240; Telephone (202) 513-7640.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Habematolet Pomo of Upper Lake adopted this Ordinance by Resolution No. 04-12-03 on April 16, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Habermatolet Pomo of Upper Lake Executive Council duly adopted the Tribal Liquor Ordinance No 2008-01 of the Habematolet Pomo of Upper Lake by Resolution No. 04-12-03 on April 16, 2012.

Dated: May 22, 2012

Donald E. Laverdure  
Acting Assistant Secretary – Indian Affairs.

The Tribal Liquor Ordinance No 2008-01 of the Habematolet Pomo of Upper Lake shall read as follows:

#### **ARTICLE I – TITLE**

This Ordinance shall be known as the "Liquor Ordinance of the Habematolet Pomo of Upper Lake."

#### **ARTICLE II - AUTHORITY**

This Liquor Ordinance is enacted pursuant to the Act of August 15, 1953 (P.L. 83-277, and 67 Stat. 586, 18 U.S.C. section 1161), as interpreted by *Rice v. Renner*, 463 U.S. 713 (1983) and the

Constitution of the Habematolel Pomo of Upper Lake, a federally recognized Indian tribe (“Tribe”), approved on May 12, 2004 and the Tribe’s inherent sovereign authority.

### **ARTICLE III - PURPOSE**

The purpose of this Liquor Ordinance is to regulate and to control the possession and sale of liquor on lands within the jurisdiction of the Habematolel Pomo of Upper Lake. The enactment of a tribal ordinance governing liquor possession and sale on Tribal Lands will increase the ability of the Tribal Government to control liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of Tribal Government services.

### **ARTICLE IV – TRIBAL JURISDICTION**

This Ordinance applies to all lands in which the Habematolel Pomo Of Upper Lake holds an ownership interest and which are defined as Indian country under 18 U.S.C. § 1151. At the time of enacting this Ordinance, the Habematolel Pomo of Upper Lake do not have an ownership interest in any lands defined by 18 U.S.C. § 1154(c) as fee-patented land in a non-Indian community or rights-of-ways which run through Tribal lands. This Ordinance is in conformity with California State alcohol laws as required by 18 U.S.C. § 1161.

### **ARTICLE V - DEFINITIONS**

As used in this Liquor Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

A. **“Alcohol”** means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

B. "**Alcoholic Beverage**" is synonymous with the term "Liquor" as defined in Letter F of this Article.

C. "**Bar**" means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of any liquor or alcoholic beverage, as herein defined.

D. "**Beer**" means any alcoholic beverage obtained by the fermentation or any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine.

E. "**Executive Council**" as used herein means the body authorized by the Habematolel Pomo of Upper Lake Constitution to promulgate all tribal ordinances and regulations.

E. "**General Membership**" means the general membership of the Habematolel Pomo of Upper Lake which is composed of the voting membership of the Tribe as a whole.

F. "**Liquor**" includes the four varieties of liquor herein defined (Alcohol, Spirits, Wine, and Beer) , and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substance, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

G. "**Liquor License**" the license authorized to be issued to those who have met the qualifications of this Ordinance at Article VIII, which grants a licensee the ability to sell Alcohol or Liquor on Tribal Lands.

H. "**Liquor Store**" means any store at which liquor is sold and, for the purposes of this Liquor Ordinance, includes stores only a portion of which are devoted to sale of liquor or beer.

I. "**Malt Liquor**" means Beer, strong beer, ale, stout, and porter.

J. "**Package**" means any container or receptacle used for holding liquor.

K. "**Public Place**" includes state or county or Tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment; public buildings; public meeting halls; lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this Liquor Ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

L. "**Sale**" and "**Sell**" include exchange, barter, and traffic and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

M. "**Spirits**" means any beverage which contains alcohol obtained by distillation including wines exceeding seventeen percent of alcohol by weight.

N. "**Tribe**" means the Habematolel Pomo of Upper Lake.

O. "**Tribal Designee**" is a person designated by the majority of the Executive Council to fulfill a specific task pursuant to this Liquor Ordinance.

P. "**Tribal Land**" means any land held in trust by the United States for the Tribe as a whole including any such land that is leased by the Tribe in trust or lands that may be leased by the Tribe to another party.

Q. "**Liquor Trust Account**" means the account designated by the Executive Council for deposit of proceeds from any tax or fee levied by the Executive Council and relating to the sale of alcoholic beverages.

R. "**Taxpayer**" is the licensee who is obligated to pay taxes from the sale of alcoholic beverages pursuant to this Liquor Ordinance.

S. "**Trust Agent**" means the Executive Council (see "Executive Council") or their designee.

T. "**Wine**" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

## **ARTICLE VI - POWERS OF ENFORCEMENT**

Section 1. **Powers.** The Executive Council, in furtherance of this Liquor Ordinance, shall have the following powers and duties:

- a. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of Alcoholic Beverages on Tribal Lands.
- b. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Executive Council to perform its functions; all such employees shall be Tribal employees;
- c. To issue licenses permitting the sale or manufacture or distribution of liquor on Tribal Lands;

- d. To hold hearings on violations of this Liquor Ordinance or for the issuance or revocation of licenses hereunder pursuant to Section VI;
- e. To bring suit in the appropriate court to enforce this Liquor Ordinance as necessary;
- f. To determine and seek damages for violation of this Liquor Ordinance;
- g. To make such reports to the General Membership; as may be required herein;
- h. To collect taxes and fees levied or set by the Executive Council, and to keep accurate records, books and accounts; and
- i. To exercise such other powers as are necessary and appropriate to fulfill the purposes of this Ordinance and as may be defined in the Tribe's Constitution, Article X, Sections 1 and 2.

Section 2. **Limitation on Powers.** In the exercise of its powers and duties under this Liquor Ordinance, the individual members of the Executive Council shall not accept for personal gain any gratuity, compensation or other items of value from any liquor wholesaler, retailer, vendor or distributor or from any licensee.

Section 3. **Inspection Rights.** The premises on which Liquor is sold or distributed shall be open for inspection by the Executive Council or its designee at all reasonable times, which includes the hours the business is open to the public, for the purposes of ascertaining whether the rules and regulations of this Liquor Ordinance are being followed.

## **ARTICLE VII - SALES OF LIQUOR**

Section 1. **Tribal Liquor License Required; Tribally Owned Businesses.** No sales of Alcoholic Beverages shall be made on Tribal Lands, except at a tribally-licensed or tribally-owned business. Nothing in this section shall prohibit a tribal licensee or the Tribe from purchasing liquor from other sources for resale, or the delivery to the Tribe for a tribal licensee of liquor purchased from other sources for resale on Tribal Lands.

Section 2. **Sale only on Tribal Land.** All Liquor sales shall be on Tribal Lands.

Section 3. **Sales for Cash.** All Liquor sales within Tribal Lands shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of ATM cards, debit cards, or major credit cards such as MasterCard, Visa, American Express, etc. as a means of securing payment for the sale.

Section 4. **Sale for Personal Consumption.** All sales shall be for the personal use and consumption of the purchaser. Resale of any Alcoholic Beverages purchased on Tribal Lands is prohibited. Any person who is not licensed pursuant to this Liquor Ordinance who purchases an Alcoholic Beverage on Tribal Lands and sells it, whether in the original container or not, shall be in violation of this Liquor Ordinance and shall be subjected to paying a fine and/or damages to the Tribe as set forth herein.

## **ARTICLE VIII - LICENSING**

Section 1. **Tribal Liquor License Requirements.** No Tribal license shall be issued under this Liquor Ordinance except upon a sworn application filed with the Executive Council or its designee containing a full and complete showing of the following:

- a. Satisfactory proof that the applicant is or will be duly licensed by the State of California to sell alcoholic beverages;
- b. Satisfactory proof that the applicant is of good moral character and reputation and that the applicant is financially responsible;
- c. The description of the premises in which the alcoholic beverages are to be sold and proof that the applicant is the owner of such premises or the lessee of such premises for at least the term of the license;
- d. Agreement by the applicant to accept and abide by all conditions of the Tribal license;



e. Payment of a fee established from time to time by the Executive Council. Said fee is established initially at \$250.00 annually but can be changed by Executive Council Resolution at any time;

f. Satisfactory proof that neither the applicant, nor the applicant's spouse, nor any principal owner, officer, shareholder, or director of the applicant, if an entity, has ever been convicted of a felony or a crime of moral turpitude as defined by the laws of the State of California;

g. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where alcoholic beverages are to be sold for at least thirty (30) days prior to consideration by the Executive Council and has been published at least twice in a local newspaper serving the community that may be affected by the license as the Executive Council may authorize. The notice shall state the date, time, and place when the application shall be considered by the Executive Council pursuant to Section 2 of this ordinance.

**Section 2. Hearing on Application for Tribal Liquor License.** All applications for a Tribal liquor license shall be considered by the Executive Council in open session at which the applicant, his, her or its attorney and/or representative, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Executive Council, by vote, shall determine whether to grant or deny the application based on: (1) the requirements of Section 1 of this Liquor Ordinance; and (2) whether the Executive Council, in its discretion, determines that granting the license is in the best interest of the Tribe. In the event that the applicant is a member of the Executive Council, or the applicant is a member of the immediate family of an Executive Council member, such related Executive Council member shall not vote on the application or participate in the application hearing as an Executive Council member.

Section 3. **Temporary Permits.** The Executive Council or their designee may grant a temporary permit for the sale of Liquor for a period not to exceed three (3) days to any person applying to the same in connection with a Tribal or community activity, provided that the conditions prescribed in Section 4 of this Liquor Ordinance shall be observed by the person holding the temporary permit. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee of \$50.00 will be assessed on temporary permits and may be waived at the discretion of the Executive Council (i.e. charitable events, fundraisers, etc.).

Section 4. **Conditions of a Tribal Liquor License.** Any Tribal liquor license issued under this Liquor Ordinance shall be subject to such reasonable conditions as the Executive Council shall enact including but not limited to the following:

- a. The license shall be for an initial term not to exceed one (1) year and may be extended up to 5 years at the discretion of the Executive Council.
- b. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.
- c. The licensed premises shall be subject to patrol by Tribal law enforcement personnel and such other law enforcement officials as may be authorized under Federal, State, or Tribal law.
- d. The licensed premises shall be open to inspection by duly authorized Tribal Designee at all times during the regular business hours.
- e. Subject to the provisions of subsection "g" of this section, no Liquor or intoxicating beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours enacted by the Executive Council, provided that the

licensed premises shall not operate or open earlier, or operate or close later, than is permitted by the laws of the State of California.

f. No Liquor shall be sold within 200 feet of a polling place on Tribal, State or Federal, Election days, or when a referendum is held by the Tribe, and including special days of observation as designated by the Executive Council.

g. All acts and transactions under authority of the Tribal Liquor License shall be in conformity with the laws of the State of California, with this Liquor Ordinance, and with any Tribal liquor license issued pursuant to this Liquor Ordinance.

h. No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume Alcoholic Beverages in the licensed establishment or area.

i. There shall be no discrimination in the operations under the Tribal Liquor License by reason of race, color, gender, creed, religion or sexual preference.

**Section 5. License Not a Property Right.** Notwithstanding any other provision of this Liquor Ordinance, a Tribal liquor license is a mere permit for a fixed duration of time. A Tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a Tribal liquor license give rise to a presumption of legal entitlement to a license/permit in a subsequent time period.

**Section 6. Assignment or Transfer.** No Tribal license issued under this Liquor Ordinance shall be assigned or transferred without the prior written approval of the Executive Council expressed by formal, written resolution and/or transfer order.

#### **ARTICLE IV - RULES, REGULATIONS, AND ENFORCEMENT**

Section 1. **Sale or Possession with Intent to Sell Without a Permit.** Any person who shall sell or offer for sale or distribute in any manner, any Liquor in violation of this Liquor Ordinance, or who shall operate or shall have Liquor in his possession with intent to sell or distribute without a license or permit, shall be in violation of this Liquor Ordinance.

Section 2. **Purchases from Other than Licensed or Allowed Facilities.** Any person who, while on Tribal lands, buys Liquor from any person other than at a properly licensed or allowed facility shall be in violation of this Liquor Ordinance.

Section 3. **Sales to Persons under the Influence of Liquor.** Selling any Alcoholic Beverage or Liquor to any obviously intoxicated person is a violation of this Ordinance.

Section 4. **Consumption or Possession of Liquor by Persons Under 21 Years of Age.** No person under the age of 21 years shall consume, acquire or have in his possession any Alcoholic Beverage. No person shall permit any other person under the age of 21 to consume Liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be in violation of a separate violation of this Liquor Ordinance for each and every drink so consumed.

Section 5. **Sales of Liquor to Persons Under 21 Years of Age.** Any person who shall sell or provide liquor to any person under the age of 21 years shall be in violation of this Liquor Ordinance for each sale or drink provided.

Section 6. **Transfer of Identification to Minor.** Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be in violation of this Ordinance; provided that corroborative testimony of witness other than the minor shall be a requirement of finding a violation of this Liquor Ordinance.

**Section 7. Use of False or Altered Identification.** Any person who attempts to purchase an Alcoholic Beverage through the use of a false or altered identification shall be in violation of this Liquor Ordinance.

**Section 8. Acceptable Identification.** Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following forms of identification which shows his or her correct age and bears his or her signature and photograph: (1) a driver's license of any state or identification card issued by any state department of motor vehicles; (2) United States active duty military; (3) a passport, or Habematolel Pomo of Upper Lake Tribal I.D. with photo.

**Section 9. Violations of this Liquor Ordinance.** Any person in violation of this Ordinance shall be liable to pay the Tribe a civil fine not to exceed \$500 per violation as civil damages to defray the Tribe's cost of enforcement of this Liquor Ordinance. In addition to any penalties so imposed, any license or permit issued hereunder may be suspended or canceled by the Executive Council for the violation of any of the provisions of this Liquor Ordinance, or of the Tribal license or permit, upon hearing before the Executive Council after 10 days notice to the licensee. The decision of the Executive Council shall be final and no appeal there from is allowed. The Executive Council shall grant all persons in any hearing regarding violations, penalties, or license suspensions under this Ordinance all the rights and due process granted by the Indian Civil Rights Act, 25 U.S.C. § 1301, et seq. Notice of a Executive Council hearing regarding an alleged violation of this Ordinance shall be given to the affected individual(s) or entities at least 10 days in advance of the hearing. The notice will be delivered in person or by certified mail with the Executive Council retaining proof of service. The notice will set out the right of the

alleged violator to be represented by Counsel retained by the alleged violator, the right to speak and to present witnesses and to cross examine any witnesses against them.

**Section 10. Possession of Liquor Contrary to This Liquor Ordinance.** Alcoholic Beverages which are possessed contrary to the terms of this Liquor Ordinance are declared to be contraband. Any Tribal agent, employee, or officer who is authorized by the Executive Council to enforce this section shall have the authority to, and shall, seize all contraband and preserve it for evidentiary purposes for use by the Executive Council or Federal or State law enforcement agencies.

**Section 11. Disposition of Seized Contraband.** Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of this Liquor Ordinance by the Executive Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

## **ARTICLE X - TAXES**

**Section 1. Sales Tax.** There is hereby levied and shall be collected a tax on each sale of Alcoholic Beverages on Tribal Lands in the amount of one percent (1%) of the amount actually collected. The tax imposed by this section shall apply to all retail sales of liquor on Tribal Lands and shall be in addition to any tax imposed on such liquor sales by the State of California.

**Section 2. Payment of Taxes to Tribe.** All taxes from the sale of Alcoholic Beverages on Tribal Lands shall be paid to the Trust Agent of the Tribe.

**Section 3. Taxes Due.** All taxes from the sale of Alcoholic Beverages on Tribal Lands are due and payable to the Trust Agent of the Tribe within thirty (30) days of the end of the calendar quarter for which the taxes are due.

Section 4. **Reports.** Along with payment of the taxes imposed herein, the Taxpayer shall submit a written accounting for the quarter of all income from the sale or distribution of alcoholic beverages as well as for the taxes collected.

Section 5. **Audit.** As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on Tribal Lands. Said review or audit may be done annually or as designated by the Executive Council through its agents or employees whenever, in the opinion of the Executive Council, such a review or audit is necessary to verify the accuracy of reports as defined in Section 4 of this Article.

## **ARTICLE XI - PROFITS**

Section 1. **Disposition of Proceeds.** The gross proceeds collected by the Executive Council from all licensing provided under this Liquor Ordinance, or the imposition of civil penalties for violating this Ordinance, or from the taxation of the sales of Alcoholic Beverages on Tribal Lands, shall be distributed as follows:

- a. For the payment of all necessary personnel, administrative costs, and legal fees for the administration and enforcement of this Liquor Ordinance and its activities.
- b. The remainder shall be turned over to the Liquor Trust Account of the Tribe.

## **ARTICLE XII - SEVERABILITY AND MISCELLANEOUS**

Section 1. **Severability.** If any provision or application of this Liquor Ordinance is determined upon review by a court of competent jurisdiction to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

Section 2. **Prior Enactments.** Any and all prior ordinances, resolutions or enactments of the Executive Council which are inconsistent with the provisions of this Liquor Ordinance are hereby repealed.

Section 3. **Conformance with Tribal, State and Federal Law.** This Ordinance conforms to all Tribal law and governing documents such as the Constitution and By-Laws. All provisions and transactions under this Ordinance shall be in conformity with California State law regarding alcohol to the extent required by 18 U.S.C. § 1161 and with all Federal laws regarding alcohol in Indian country.

Section 4. **Enforcement.** All actions brought by the Executive Council to enforce the provisions of this Ordinance shall be filed in the Tribal Court of the Habematolel Pomo of Upper Lake. In the absence of a tribal court, said actions shall be filed in Federal Court in the Northern District of California and be appealable in the Federal Court system. If the Federal Court should determine that it lacks jurisdiction over said action, it shall be filed in the California State Court in County of Lake with subject matter jurisdiction and venue over the action. The first court system to have jurisdiction over an enforcement action which may be brought in Tribal, Federal, or State Court, shall have exclusive jurisdiction over such actions.

Section 5. **Effective Date.** This Ordinance becomes effective after the Secretary of the Interior certifies the Ordinance and publishes it in the Federal Register.

## **ARTICLE XIII – AMENDMENT**

Section 1. **Amendment or Repeal.** This Ordinance may be amended or repealed by a majority vote of the Executive Council at a duly called meeting. Amendments of this Ordinance shall become effective after the Secretary of the Interior certifies and publishes the Amendments in the Federal Register.



#### **ARTICLE XIV - SOVEREIGN IMMUNITY**

Section 1. Nothing contained in this Liquor Ordinance is intended to nor does in anyway limit, alter, restrict, or expressly or unequivocally waive the Tribe's sovereign immunity from un-consented suit or action.

[FR Doc. 2012-12843 Filed 05/24/2012 at 8:45 am; Publication Date: 05/25/2012]